STATE OF MAINE
PUBLIC UTILITIES COMMISSION

March 7, 2001

ORDER DENYING MOTION TO INVESTIGATE BANGOR HYDRO-ELECTRIC COMPANY'S STANDARD OFFER COSTS

MAINE PUBLIC UTILITIES COMMISSION
STANDARD OFFER BIDDING PROCEDURE

Docket No. 99-111

MAINE PUBLIC UTILITIES COMMISSION
STANDARD OFFER BIDDING PROCESS

Docket No. 2000-808

I. SUMMARY

We deny the request of the Industrial Energy Consumer Group (IECG) for hearings before changing standard offer prices. We also deny IECG's motion to investigate the prudence of the costs incurred by Bangor Hydro-Electric Company (BHE) to provide standard offer service since March 1, 2000. Our own summary investigation discloses that BHE acted prudently in acquiring wholesale power supply for standard offer service during the past year. Indeed, the most critical power supply decisions were ultimately made by the Commission, as reflected in Commission orders, and not by BHE.

II. BACKGROUND

Prior to March 1, 2000, as a consequence of the Commission's rejection of all retail standard offer service bids, we directed Bangor Hydro-Electric Company (BHE) to provide standard offer service to all customer classes using power procured from the wholesale market. By Order on February 29, 2000, the Commission endorsed BHE's portfolio strategy for power supply, finding the approach reasonable and prudent. At that time, BHE entered into a wholesale power supply contract for approximately 60% of the standard offer load requirements. Over the next months, the Commission approved various bilateral contracts by which BHE purchased additional energy and reliability products necessary to serve the standard offer load. Carrying out the power supply strategy that we approved, BHE purchased the remainder of the energy and electricity products necessary to serve the standard offer load on the spot markets operated by the New England ISO.

In the February 29 Order, the Commission established standard offer prices based upon the initial wholesale power contract that supplied 60% of the load requirements and the forecasted cost of the energy and associated products that BHE would buy on the spot market. So that the Commission would not impede the development of a market in BHE's service territory, the Commission set the price for the

medium and large non-residential standard offer classes somewhat above BHE's projected costs to serve that load.[1] Due to the costs of subsequent bilateral arrangements entered into by BHE and cost increases relative to the forecasted spot prices, on two different occasions during the past year the Commission increased the standard offer prices for all three standard offer classes within the BHE territory.

Despite the standard offer price increases after March 1, 2000, BHE notified the Commission in January, 2001 that BHE projected a $4.3 million undercollection of standard offer revenues compared to standard offer costs through the end of February, 2001. The undercollection represented $3.0 million of actual undercollection through December 2000 and $1.3 million of undercollection projected for January and February 2001 sales. BHE stated that its undercollection estimates assumed a 17¢ per kW-month ICAP deficiency charge. To the extent that a larger ICAP deficiency charge was imposed by the FERC, the undercollection would be greater.[2]

On January 16, 2001, the Commission invited comments on whether the Commission should increase standard offer prices in the BHE service territory effective February 1, 2001 to begin recovering all or a portion of the projected undercollection. The Commission also sought comment on whether recovery of the undercollection should be delayed until March 1, 2001 when standard offer prices were expected to increase in any event due to increased energy and ICAP costs. The Commission also sought comment on how the uncertainty associated with ICAP deficiency charges should be accounted for in any standard offer price increase. Lastly, the Commission sought comments on whether, assuming a standard offer undercollection exists as of March 1, 2001, BHE should recover the undercollection from standard offer customers or T&D ratepayers.

On January 19, 2001, the Commission received comments from the Industrial Energy Consumer Group (IECG) and, in addition to an objection, a request for hearing and motion for the Commission to open an investigation into BHE's request and to give the IECG the rights it would receive as an intervenor in such an investigation. The IECG asserted that, because BHE serves as the standard offer provider, standard offer service amounts to utility service subject to the Title 35-A ratemaking requirements. As such, the Commission could not increase standard offer prices without conducting an adjudicatory proceeding. Even if the Commission could do so, IECG suggested that the

[1] Because the Commission found that residential/small non-residential standard offer class customers were unlikely to be the subject of robust competition in the generation market, the Commission set their standard offer prices at the level BHE forecasted.

[2] On December 13, 2000, FERC imposed a $8.75 kW per month deficiency charge, retroactive to August 2000. On January 10, 2001, FERC stayed its December 13 Order pending rehearing. BHE projected an undercollection of $6.2 million if the $8.75 deficiency charge is imposed effective January 1, 2001 and an undercollection totaling $13.3 million if the $8.75 deficiency charge is retroactive to August 1, 2000.

Commission open a formal investigation before acting on BHE's proposed rate increase.

The IECG objected to a standard offer increase effective on February 1, 2001. The IECG stated that it was unclear that BHE's standard offer costs necessitated a price increase. Moreover, it was not clear, according to IECG, whether BHE had acted prudently in incurring standard offer costs, even assuming that BHE's representation of an undercollection is confirmed. The IECG questioned in particular BHE's actions concerning the purchase or lack of purchase of ICAP and the extent to which the undercollection reflected ICAP costs beyond that built into then-current standard offer prices.

IECG requested a "reasonable and meaningful opportunity" for it to discover and present relevant evidence on the matter of the standard offer costs undercollection. In any event, IECG asserted that if the undercollection had to be recovered by BHE, that rate shock could be avoided only if the undercollection was to be recovered over at least a 12-month period and from the general body of T&D ratepayers rather than standard offer customers.

On January 22, 2001, the Commission deliberated the question of whether to raise standard offer prices in the BHE's service territory effective February 1 in order to reduce or even eliminate the anticipated undercollection. At that public session, the Commissioners voted not to change standard offer prices in the BHE service territory effective February 1. Since the Commission did not change the current standard offer prices, no order discussing the possibility of a price change was ever issued.

The power supply arrangements that provided first-year standard offer service terminated on February 28, 2001. New power supply arrangements have been made for service effective March 1, 2001. The fact remains that at the end of February 2001, BHE had spent more to provide standard offer service than it collected in revenue from standard offer customers. Even though IECG's objection, request for hearing, and motion for investigation is now moot as to a price change effective on February 1, IECG's request for hearing and motion for investigation into the reasonableness and prudence of standard offer costs remains ripe for price changes that took effect on March 1, 2001. The initial standard offer period service terminated on February 28, 2001 with an undercollection. We must address IECG's concerns before the undercollection is included in standard offer prices.

III. DISCUSSION AND DECISION

A. Request for Hearing

We reject the IECG's argument that standard offer service, when provided by a T&D utility, is utility service subject to the adjudicatory requirements of Title 35-A applicable to any other utility rate. We expressly rejected similar arguments in an Order Amending Standard Offer prices for CMP on January 16, 2001. *Maine Public Utilities*

Commission, Docket No. 99-111, Order Part II at 4 (Jan. 16, 2001). Effective March 1, 2000, Title 35-A provides for regulation of T&D utilities. Electric utilities subject to Commission regulation no longer exist. Generation service is not a public utility service. Indeed, the basic concept behind the Restructuring Act was to deregulate generation service. At least for the transition to generation service competition, the Legislature provided for default generation service, called standard offer service. Standard offer providers are intended to be selected by the Commission, from among the competitive providers who bid to provide the service. These competitive providers are not utilities.

When the Commission is forced to require a T&D utility to become the standard offer provider, as the statute permits, the generation service that the T&D purchases is not transformed into utility service. The Title 35-A definitions still provide that generation service is not utility service. Whether the Commission sets a standard offer price by selecting one or more winning bidders or by designating the T&D utility as standard offer provider and sets a price based upon the wholesale power supply costs and the T&D administrative costs, a standard offer price is not a rate within 35-A M.R.S.A. § 301 and the Commission is not subject to the ratemaking requirements of Title 35-A when setting standard offer prices. Accordingly, we deny IECG's request that the Commission follow the utility ratemaking process afforded by Title 35-A before charging standard offer rates.

B. Motion for Prudence Investigation

A review of the Commission's orders dealing with standard offer service in the BHE service territory demonstrates that we have already determined that most of BHE's actions as the standard offer provider have been prudent. In our February 29, 2000 Order, we agreed that BHE's portfolio strategy was reasonable, including the 1-year wholesale power supply contract for about 60% of the standard offer load and the plan at that time to purchase the rest of the energy and electricity products needed to serve the standard offer load on the spot market. We commented that "future events may present the opportunity or need to acquire some or all of the energy and ancillary products necessary to serve the remaining approximately 40% of standard offer load from sources other than the spot market." We directed BHE to file monthly reports about standard offer costs and collections and to meet with the Commission before the summer season to discuss updated recommendations concerning power supply procurement strategy.

In compliance with the February 29 Order, BHE filed a report on June 5, 2000. In that report, BHE stated that the Commission should consider increasing the amount of energy under fixed price contracts to reduce the risk of high summer prices to standard offer customers. Subsequent to June 5, we met with BHE and the Public Advocate. BHE told the Commission about its discussions with suppliers and the range of prices which were being quoted at that time. We specifically asked BHE representatives to explore with potential suppliers the amount of summer price "insurance" that could be obtained in the price range of $2 to $4 million. In light of the

summer 1999 spot market prices and the unprecedented price spike of May 8, 2000, the Commission desired to explore the amount of price hedges that could be obtained for the price range discussed.

On June 12, 2000, BHE filed two power supply agreements for Commission approval. The arrangements were intended to provide energy during the summer months in order to hedge against the risk of high summer prices. We concluded that both agreements were reasonable mechanisms to hedge against the risk of extremely high summer prices and therefore approved both agreements in an Order dated June 15, 2000.

BHE reported back to the Commission on June 23 with another agreement, subject to Commission approval, to purchase energy during the summer months. The June 23 contract, in combination with the two contracts approved on June 15, would cost approximately $3 million. We found the June 23 power supply arrangement to be another reasonable hedge against the risk of high summer prices and approved the agreement in an order on the same day.

Based upon the three additional power supply contracts entered into as summer price hedges, we sought comment on whether standard offer prices in BHE's service territory should be increased. We noted that when the $3 million cost of the three new power supply contracts was included in BHE's projections, BHE estimated that standard offer costs would exceed standard offer revenue by $1 million at February 28, 2001. In an Order on July 20, 2000, we decided to increase standard offer prices in order to collect an additional $1 million in revenue.[3]

On August 7, 2000, BHE filed with the Commission two agreements to purchase installed capability (ICAP) for the period from August 2000 through February 2001. The Public Advocate supported approval of the ICAP agreements. Due to the uncertainty as to how FERC would set the proper ICAP deficiency charge, we found it reasonable for BHE to protect against that uncertainty regarding future ICAP costs by entering into the agreements. Accordingly, we approved the agreements in an Order dated August 17, 2000.

On September 13, 2000, BHE filed a request that the Commission increase standard offer prices for all customer classes. An increase was warranted, BHE explained, because of sustained increases in energy spot market prices beyond BHE's projected spot prices, which BHE expected to continue, and from significantly higher ICAP prices than projected. Two days later, BHE filed a report which corrected

[3] Chairman Welch dissented as to the price increase. The majority raised prices so that the medium and large non-residential customer classes paid their portion of the $1 million increase during the months of August and September. The residential/small non-residential customer class prices were designed to recover the $1 million over the remainder of the standard offer period. Chairman Welch joined the majority in deciding the approach for imposing the increase among customer classes.

the calculation of August standard offer costs and updated its projected costs for spot market purchases. After the update and correction, BHE estimated that its costs of providing standard offer service would exceed standard offer revenues by $7.9 million by the end of February, 2001. In an Order dated September 21, 2000, we decided to increase the standard offer prices in BHE's service territory for the period October 1, 2000 through February 28, 2001 to recover the $7.9 million deficiency that BHE then estimated. We restated the principle that standard offer prices should reflect standard offer costs. In addition, we desired to avoid the potential for substantial deferrals of costs due BHE.

IV. CONCLUSION

A summary review of BHE's actions to procure power to supply standard offer service over the 12 months leads us to conclude that, despite the allegations raised by IECG, a formal prudence investigation is not warranted. We have already found many, if not most, of BHE's actions to be prudent. Additionally, BHE has kept us regularly apprised of market conditions and supply options. Moreover, even though the Commission sought and relied on BHE's recommendations as to wholesale power supply and relied on BHE to carry out the actual negotiations and contracts with suppliers, the important decisions leading to the strategy and acquisition of BHE's wholesale power supply were ultimately made by the Commission. Based on our knowledge of the circumstances, we conclude that there is no basis for a prudence investigation, and thus we deny IECG's motion for investigation.

Dated at Augusta, Maine, this 7th day of March, 2001.

BY ORDER OF THE COMMISSION

_____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

This document has been designated for publication.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.